

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO: 7:06-CR-00063-BR
NO: 7:10-CV-00094-BR

COLLIER D. SESSOMS

v.

UNITED STATES OF AMERICA

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ORDER

This matter is before the court on a petition for writ of audita querela pursuant to 28 U.S.C. § 1651(a).

“A writ of audita querela is not available to a petitioner when other avenues of relief are available, such as a motion to vacate under § 2255.” In re Wright, 437 F. App’x 214, 214-15 (4th Cir. 2011) (unpublished) (citing United States v. Torres, 282 F.3d 1241, 1245 (10th Cir. 2002); United States v. Johnson, 962 F.2d 579, 582 (7th Cir. 1992)). As best as the court can discern, petitioner, who is still serving his sentence, challenges his conviction and sentence based on the Court’s decisions in Missouri v. Frye, 132 S. Ct. 1399 (2012), and Lafler v. Cooper, 132 S. Ct. 1376 (2012). Petitioner must challenge his conviction and sentence, if at all, pursuant to 28 U.S.C. § 2255. See Wright, 437 F. App’x at 214-15. The fact that petitioner has previously filed a § 2255 motion does not make relief available via a writ of audita querela. See id. at 215.

The petition is DISMISSED.

This 24 July 2012.



W. Earl Britt
Senior U.S. District Judge